IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4670 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEMUNA W/O RASHIDKHAN SARVARKHAN PATHAN

Versus

TULSIDAS ASHANDAS JETHWANI

Appearance:
MR MTM HAKIM for appellants
DS AFF.NOT FILED (N) for Respondent No. 1
MR PV NANAVATI for Respondent No. 2
MR VIBHUTI NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 08/04/2002

ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. This appeal under Section 173 of the Motor Vehicles Act is directed against the award and order rendered in the application under Section 163-A of the Motor Vehicles Act in Motor Accident Claim Petition No. 1031/98 by the Motor Accident Claims Tribunal (Main) Surat, whereby the claimants - dependents of the deceased have been awarded the amount of Rs. 2,92,500/-.

2. It is stated by Mr. M.T.M. Hakim, learned Advocate for the appellants that in view of the decision of the Supreme Court in the case of Oriental Insurance Co. vs. Hansrajbhai Kodala, reported in 2001(4) SC 477, the applications under Section 166 of the Act and 163A of the Act, both, cannot be resorted to by the claimants, and the appellants would like to proceed with the Application under Section 166 of the Act before the Tribunal and the appellants therefore be permitted to withdraw the application (Exh.6) under Section 163A of the Act, below which the impugned award and order has come to be passed by the Tribunal. It is further stated that the impugned award and order be treated as non-existent with liberty to the appellants to make an application under Section 140 of the Act before the Tribunal.

3. It is stated by Mr. P.V.Nanavati, learned Advocate for the respondent Insurance Company that there is no objection in permitting the appellants to withdraw their application (Exh.6) under Section 163A of the Act and has prayed the impugned award and order be treated as non-existent.

4. In view of the above, Application under Section 163A of the Act (Exh.6) is permitted to be withdrawn. The impugned award and order dated 30.3.2001 therefore becomes non-existent.

5. It is stated by Mr. Nanavati that Rs. 3,41,280/- has been deposited before the Tribunal pursuant to the impugned award and order dated 30.3.2001. The claimants would be entitled to move an application under Section 140 of the Motor Vehicles Act, and in that event, out of the amount of Rs.3,41,280/- deposited by the Insurance Company, retaining the amount of Rs. 50,000/- to be considered at the time of passing orders in the Application under Section 140 of the Act, the remaining amount be refunded to the Insurance Company on the Insurance Company making such a request before the Tribunal. The claimants shall file necessary declaration as regards applicatin under Sec. 166 of the Act, before

the Tribunal.

6. In view of the above, as submitted by Mr. M.T.M. Hakim, the appeal is permitted to be withdrawn. Appeal stands withdrawn and disposed of accordingly before the effective hearing. No order as to costs.

(N.G. Nandi, J.)

(J.R. Vora, J.)

p.n.nair